

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on October 1, 2015
Sacramento, California**

PRESENT:

Art Carter, Chair
Ed Lowry, Member
Judith Freyman, Member
Han Ha, Interim Executive Officer
Jeff Mojcher, Chief Counsel
Ursula Clemons, Presiding Administrative Law Judge
Autumn Gonzalez, Industrial Relations Counsel
Aaron Jackson, Industrial Relations Counsel
Lee Berlin, Staff Services Manager
Marti Fisher, California Chamber of Commerce
Jeremy Smith, State Building and Construction Trades Council

MINUTES OF SEPTEMBER 17, 2015 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the September 17, 2015 Board meeting. Chair Carter seconded. The Board voted to approve the draft minutes of the September 17, 2015 Board meeting.

NEW BUSINESS:

(The Appeals Board hears and discusses new reports presented by staff.)

ACTION: No report.

OLD BUSINESS:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

ACTION: No report.

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board)

ACTION: No report.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: Chair Carter and Counsel Jackson will meet telephonically with the DIR's attorney next week to discuss interpretations of the Bagley-Keene Act.

BOARD MEMBERS' REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

ACTION: Member Lowry attended a training event at the California District Attorney Association. The topic was criminal cases involving worker safety violations.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

OPERATIONS UPDATE:

ACTION: Interim EO Ha said that she and PALJ Clemons would head up the OASIS project while PALJ Robinson is on leave later this month.

STAFF REPORTS:

(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

OASIS PROJECT:

ACTION: The OASIS team wrapped up the Appeal Initiation group's business requirements. The next step is to complete Calendaring and then record the business requirements of the Legal Unit.

RULEMAKING:

ACTION: The Board's current rulemaking packages have not yet entered the formal rulemaking period. After reviewing Board practices, Chair Carter requested a small change to Section 359.1 to extend the timeframe for appellants to perfect the appeal. The change will be part of the formal rulemaking process with the usual comment period and stakeholder meeting before the package is submitted for formal adoption.

LITIGATION UPDATE:

ACTION: Two briefs were submitted on time last month. Two hearings are scheduled in Orange and Sacramento Counties in October.

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

PUBLIC COMMENT:

(Public comment will be entertained during discussion of each agenda item of the Open Meeting.)

ACTION: No report.

The Board recessed to its closed session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

ABM FACILITY SERVICES, INC. DBA ABM BUILDING VALUE, 12-R3D6-3496
THROUGH 3498

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

CITY OF LONG BEACH, DEPARTMENT OF PUBLIC WORKS, 14-R3D5-0970

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

PETITIONS FOR RECONSIDERATION:

CGK INC DBA PREMIER STEEL FABRICATION, 13-R4D4-0518 & 0519

ACTION: Member Lowry moved that the Board vote to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to deny this Petition for Reconsideration.

REALTIME STAFFING SERVICES, INC. DBA SELECT STAFFING, 12-R4D3-3687
THROUGH 3689

ACTION: This matter will be considered at the next regular meeting of the Board to be held on October 15, 2015.

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

CHARLES PANKOW BUILDERS, INC., 13-R4D1-1759

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

SAVANT CONSTRUCTION, INC., 14-R3D1-3021

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

SYAR INDUSTRIES, INC., 13-R5D1-1876 THROUGH 1880

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

ORDERS DISMISSING APPEAL:

MATTERS INVOLVING LATE APPEALS:

(These are matters such as orders dismissing appeal, orders granting leave to file late appeal and orders denying leave to file late appeal)

ORDER DENYING LATE APPEAL

ANGEL SOTO AGUILAR DBA SCORPION PALLETS, 15-R6D5-9155

ACTION: Member Lowry moved that the Board approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge.

CESAR DIAZ DBA CESAR'S AUTO REPAIR, 15-R6D5-9157

MICHAEL PAUL ROMANI DBA EARTH STATION, 15-R6D7-9156

TIM BOERGER DBA JASMINE THAI CUISINE AND PHO NOODLE, 15-R6D5-9158

WALMART STORES, INC., 15-R3D3-9159

ACTION: Member Lowry moved that the Board approve these Orders Denying Leave to File Late Appeal of Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Order s Denying Leave to File Late Appeal of Administrative Law Judges.

MATTERS HELD OVER FROM PREVIOUS MEETINGS:

(If the Board is unable to conclude its deliberations and/or if any matter(s) is (are) put over from a previous meeting, they will be further discussed.)

MATTERS PENDING RECONSIDERATION:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

ACTION METAL RECYCLING, INC., R2D2-1125 THROUGH 1126

CHEVRON U.S.A. INC., 13-R6D3-0655 THROUGH 0662

ACTION: The Board discussed this matter.

CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038

CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364

DIONYSUS DREAM INC., DBA NEWPORT MESA CARWASH & SERVICE,
15-R6D5-9087
ECHO ALPHA INC. ET AL, 14-R3D1-0802 THROUGH 0804
EKEDAL CONCRETE, INC., 13-R3D1-0131 THROUGH 0133
GOLDEN STATE WARRIORS, 15-R1D4-9060
HERMAN WEISSKER, INC., 13-R3D1-3279
L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822
McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406

McCARTHY BUILDING CO., INC., 12-R1D4-3458

ACTION: Member Lowry moved that the Board ask for further briefing in this matter. Chair Carter seconded the motion. Chair Carter and Member Lowry voted to request further briefing from the parties in this matter. Member Freyman voted no.

MCM CONSTRUCTION, INC., 13-R1D2-3851 THROUGH 3854
GONZALO OLASCOAGA DBA GONZALO OLASCOAGA, 13-R6D5-2097
AND 2098
SIERRA FOREST PRODUCTS, 09-R2D5-3979
UNITED PARCEL SERVICE, 14-R2D1-1779
W.A. RASIC CONSTRUCTION, INC., 13-R3D1-2952

NATIONAL DISTRIBUTION CENTERS, LP, 12-R6D2-0391
TRI-STATE STAFFING, 12-R6D2-0378

ACTION: Member Lowry moved that the Board vote to approve this draft Decision After Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Decision After Reconsideration for signature.

LEGISLATION:

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

1. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
3. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)

4. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
5. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
6. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
7. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
8. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
9. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
10. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
11. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
12. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
13. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
14. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
15. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
16. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
17. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575 (12-R5D1-337)
18. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
19. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 34-2014-80001749 (2008-R2D1-3414 THROUGH 3418)
20. SHIMMICK-OBAYASHI, 34-2014-80001750 (08-R3D3-5023 THROUGH 5025)
21. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)
22. BRUNTON ENTERPRISES DBA PLAS-TAL MFG CO., 34-2014-80001817 (09-R6D2-2238 ~ 2241)

23. WEST VALLEY CONSTRUCTION, INC., 34-2014-80001832 (12-R2D5-3526)
24. BARNARD IMPREGILO HEALY JV, CPF-14-513697 (14-R5D1-9013)
25. TL PAVLICH CONSTRUCTION, INC., BS14-9660 (11-R3D6-1303 THROUGH 1310)
26. DAVIS DEVELOPMENT CO., 34-2014-80001892 (10-R3D1-3360 THROUGH 3362)
27. FEDEX GROUND PACKAGING SYSTEM, INC., CIVDS1415696 (13-R3D1-1220)
28. KEY ENERGY SERVICES, INC., S-1500-CV-283958, EB (13-R4D3-2239 ~ 2242)
29. KDTD, INC. DBA KD DEVELOPMENT, INC., 37-2015-00003550-CU-WM-CTL (14-R3D2-1935 & 1936)
30. HHS CONSTRUCTION, 34-2015-80002052 (12-R3D2-0492 THROUGH 0497)
31. MARIA DE LOS ANGELES COLUNGA dba MERCED FARM LABOR, 15CV-00945 (08-R2D1-3093 ~ 3098)
32. STANISLAUS FOOD PRODUCTS CO., 34-2015-80002087 (13-R2D4-0572 ~ 0574)
33. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)

APPELLATE COURT:

1. XL CONSTRUCTION, C074514, 34-2009-80000300 (08-R1D2-1191 THROUGH 1193)
2. AC TRANSIT, A142799, RG13-687314 (08-R1D4-0135)
3. THYSSENKRUPP ELEVATOR CORPORATION, C077115, 34-2013-80001456 (11-R2D1-2217 ~ 2219)
4. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, C078953, 34-2011-80000965, (10-R6D2-0188 THROUGH 0191)

ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

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1. ALL STAR SEED, 15-R3D2-0046
2. ALTMAN SPECIALTY PLANTS, INC., 15-R3D2-1394
3. AMERICAN HVAC MFG., INC., 15-R3D5-2053 AND 2054
4. ASSOCIATED FEED & SUPPLY CO, 14-R2D4-4056 AND 4057
5. BAKKAVOR USA, INC., DBA TWO CHEFS ON A ROLL, 15-R3D5-0398
THROUGH 0400
6. BARRETT BUSINESS SERVICES INC, 14-R2D1-3364
7. BCJ SAND & ROCK, INC., 15-R5D1-0062
8. BIG W RANCH, 15-R2D3-2639
9. BIRMINGHAM REALTY SERVICES INC, 15-R3D1-0957
10. BRIONES MAINTENANCE SERVICES CORP. BMS, 15-R1D2-2724 AND 2725
11. CALIBER HOLDINGS CORPORATION DBA CALIBER COLLISION,
14-R3D3-0702 AND 0703
12. CALIFORNIA EXPANDED METAL PRODUCTS CO. DBA CEMCO, 15-R1D5-1113
AND 1114
13. C J AMERICA DBA CJ FOODS MANUFACTURING CORPORATION, 15-
R3D1-1509 AND 1510
14. CMC STEEL FABRICATORS INC DBA CMC REBAR, 15-R3D2-1783
15. COASTAL MANUFACTURING, INC., 15-R1D2-1374 THROUGH 1376
16. DENNIS COLBERN DBA DENNIS COLBERN TILE CO., 15-R6D5-2821
17. CTS VENTURES DBA CYRUS TREE SERVICE, INC., 14-R2D1-3797 AND 3798
18. COUNTY OF LOS ANGELES FIRE DEPT., 14-R4D3-3950 THROUGH 3953
19. DE LA ROSA WOOD DESIGN, INC., 15-R3D5-0361
20. EDELBROCK FOUNDRY LLC, 15-R6D2-0029 THROUGH 0032
21. THE EPIPHANY HOTEL, 15-R1D3-2825

22. FILGER MANUFACTURING, INC., 14-R3D1-3085
23. FRITO-LAY, INC., 15-R4D7-1648 AND 1649
24. GALASSO'S BAKERY, 15-R3D3-2177 AND 2178
25. GB ENERGY, INC. DBA GRANITE BAY ENERGY, 14-R2D1-3961 AND 3962
26. GERCO CONTRACTORS, INC., 14-R3D1-2786
27. GLOBAL HVAC DISTRIBUTORS, INC., 15-R2D5-0010
28. GRANADA WROUGHT IRON, INC., 15-R4D1-1968
29. GRANITE CONSTRUCTION COMPANY, 14-R5D1-3693
30. HARRIS BLADE RENTAL, 14-R2D2-0449
31. HIGH COUNTRY OUTDOOR, 14-R2D4-3820
32. HOME DEPOT USA, INC., 15-R1D3-3027 AND 3028
33. HOMEPRO REMODELING, INC. DBA ADVANTAGE LANDSCAPING,
15- R6D5-2757 AND 2758
34. JACKRABBIT, INC., 15-R2D4-1208 AND 1209
35. KENYON PLASTERING OF FRESNO INC, 14-R2D5-2975
36. LAND O'LAKES, INC., 15-R2D5-1238 THROUGH 1240
37. LAS HUERTAS FARM LABOR, 14-R4D3-2810
38. LEVY RESTAURANTS, 14-R4D1-3585
39. MAINTENANCE SERVICES, INC., 12-R2D5-1156 THROUGH 1168
40. MARICOPA ORCHARDS, LLC, 14-R4D7-3333 THROUGH 3335
41. MARUCHAN, INC., 15-R3D1-0070 THROUGH 0072
42. MATILDE ALVEREZ DE PEREZ DBA M A FASHION, 15-D6D5-2541 AND 2542

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43. MV TRANSPORTATION, INC., 14-R3D1-2820
44. NORM WILSON & SONS, INC., 14-R4D1-3771
45. PACIFIC CAR WASH & MARKETPLACE, INC., 15-R2D4-1120 THROUGH 1122
46. PEKING NOODLE, INC., 14-R4D1-3636
47. REED AND GRAHAM, INC., 15-R1D2-2760 THROUGH 2762
48. ROBERT S. FLORES, D.M.D., INC. DBA R&R DENTAL CARE, 15-R4D7-1466
AND 1467
49. ROSSI & SON PAINTING, INC., 15-R6D5-0695
50. ROUTE 66 CAR WASH, 14-R4D4-2932
51. SALINAS VALLEY MEMORIAL HOSPITAL, 15-R1D2-2244
52. SAUNDERS AIR CONDITIONING & HEATING, 14-R2D4-3905
53. SELECT STAFFING COMPANIES, 14-R4D4-0181 AND 0182
54. SHIBAH FASHION INC., 15-R6D5-2716 AND 2717
55. SONOMACEUTICALS LLC, 15-R1D5-0557 THROUGH 0559
56. SONOMACEUTICALS LLC, 15-R1D5-0560 AND 0561
57. USA CORP. DBA WILCOX & WILCOX, 14-R4D3-3884 THROUGH 3885
58. UTC AEROSPACE SYSTEMS, 14-R3D2-3215
59. VALASSIS DIRECT MAIL, 15-R4D4-0448 THROUGH 0450
60. VALLEYCREST LANDSCAPE MAINTENANCE, INC., 14-R4D1-3784
61. VALLEY WEST FARMS, INC, 15-R4D7-1928 & 1929 AND 15-R4D7-2048
62. VERTEX COATINGS, INC., 15-R3D3-2650 AND 2651
63. VLOT BROTHERS CALF RANCH, 15-R2D5-0105
64. WEST COAST AEROSPACE, INC., 15-R3D5-0980 AND 0981

65. WILLIAM J. BRYANT CONSTRUCTION, INC, 14-R2D5-3821

66. ZANKER ROAD RESOURCE MANAGEMENT, LTD., 14-R1D2-3567 AND 3568

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended.

PERSONNEL:

(Issues regarding staff)

ACTION: The Board discussed personnel matters.

The Closed Session was adjourned at 11:29 a.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned at 11.30 a.m.